

1 ADMIN. JUDGE STEINBERG: Well, that's what
2 his appearance says.

3 MR. THOMAS: That's correct, your honor.

4 ADMIN. JUDGE STEINBERG: And I don't think
5 I'd allow that in any event. You know, double,
6 triple, quadruple teaming.

7 We've had tons of cases where there had
8 been many, many, many more parties than this. And
9 basically what I have said is, "Okay, all the, you
10 know, let's say Party A witnesses up on the stand and
11 there are sixteen other parties. The sixteen parties
12 decide who is going to do primary cross and secondary
13 cross for everybody and that's it." And they -- but
14 that's up to, you know, if they don't want to do both
15 then if I've ruled that if you don't agree then we'll
16 take it in the order of who's on the caption.

17 So that Arkansas Cable would do the first
18 witness. Then Comcast would do the second. Buford
19 would do the third. And you know, but we don't have
20 to worry about that yet. But I don't intend to let it
21 get out of hand and then -- because it's a fairness
22 thing.

1 MR. RATHER: And if I may inquire your
2 honor is, as I understand what you are telling us, if
3 later, if another attorney enters an appearance as
4 counsel for WEHCO, that attorney would not be allowed
5 a second bite at the apple on cross examination.

6 ADMIN. JUDGE STEINBERG: We'll cross that
7 bridge when we come to it because that might be, that
8 might be a different matter. And we might have to do
9 one of the schedules just to who is going to do who.
10 But let's not worry about that yet.

11 MR. THOMAS: Your honor, if I may just to
12 -- what Mr. Rather said about the, my representations
13 are essentially correct. That that is what we would
14 endeavor to do. The lawyers you see before you will
15 be the ones who would be conducting the cross
16 examination on behalf of all four or five of the
17 complaining parties.

18 And on a similar issue, just returning to
19 discussion that we had earlier about Discovery. Our
20 intention is not to go in and use every single one of
21 our fifty or two hundred however or two hundred and
22 fifty however you choose to characterize it, discovery

1 requests, interrogatories, document request production
2 etc. We're going to try and be as efficient about
3 this as we can because I think it would probably kill
4 all of us if we weren't.

5 ADMIN. JUDGE STEINBERG: That's a way to
6 get -- resolve the case, isn't it? Maybe I should
7 give you a hundred.

8 MR. THOMAS: It's probably occurred --

9 ADMIN. JUDGE STEINBERG: Okay. So let me
10 -- the procedural schedule I handed out, I'll adopt.
11 I'm not going to read all the -- it would be a waste
12 of time to read all the dates into the record. It'll
13 be in a subsequent order. And I'm not going to change
14 any of them. What you see is what's going to be in
15 the order. Except the language of Footnote 1 will be
16 changed around.

17 Let me also look, take a look at Footnote
18 6 which is how I want the exhibits prepared. And let
19 me, let me put this on the record, now. And if we
20 need to revisit it, we'll revisit it. Essentially the
21 exhibit exchange date is the date that everybody
22 actually receives the exhibits. So that it's your

1 responsibility to get them into the mail or into a
2 private carrier that gets them delivered to everybody
3 on June 15, 07.

4 And essentially I want the exhibits to, I
5 don't know if they'll be Complainants Exhibit 1 or
6 Buford Exhibit 1 or WEHCO Exhibit 1 but just everybody
7 start with the number 1 or the letter A and then
8 number them all 1,2,3,4,5. Very -- I don't care if
9 you use a number, I don't care if you use a letter.
10 I suspect you are going to run out of letters though.
11 So maybe you better use numbers. But that's up to
12 you. And the important thing is start every exhibit,
13 every page of every exhibit will have a number on it,
14 except the cover sheet. If it's -- the cover sheet
15 might say Complainants Exhibit 1. And put them loose-
16 leaf binders with tabs on them and the tabs will say
17 1,2,3 whatever. But every page of every exhibit has
18 a number and start with the number 1 and end with the
19 last number.

20 And if you have to use a Bates stamp, use
21 a Bates stamp. Because the worst thing is for
22 everybody to be sitting in the courtroom and have a

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1 witness looking at page 847 and everybody's page 847
2 is different. Because it's not numbered and nobody
3 can find it. So that's the, that's the most important
4 thing as far as I'm concerned.

5 The exhibits -- covering the exhibits
6 should be just a little chart, the name of the
7 exhibit, the number of pages and who's sponsoring it.
8 So that everyone knows who they are going to cross-
9 examine if there is going to be a cross-examination.

10 And just include a brief summary of the
11 respective testimony of any witness that is going to
12 testify as opposed to doing a written statement. And
13 I would hope that that would be -- I would hope that
14 there would be no witnesses testifying without written
15 statements.

16 Generally, let me explain the way I like
17 it done. You have a written statement, a written
18 affidavit, a declaration under penalty of perjury.
19 And let's say, that is received into evidence subject
20 to cross-examination. The witness sits up on the
21 stand. The party sponsoring the witness says, "Look at
22 Exhibit 1." "Is that your signature on this page?"

1 "Yes, that's my signature." "Are the facts contained
2 or the opinions or whatever true and correct to the
3 best of your knowledge and belief?" "Yes." "I move,"
4 -- well the exhibit should be in or out by then.
5 "Okay the witness is available for cross-examination."
6 So that everything should be in that written
7 statement.

8 And if something needs to be corrected.
9 Okay, there's a typo on page, on page this and I meant
10 to say, you know, not this. You know, that instead of
11 saying you know, well anyway, you know, that's fine.

12 But I prefer not to have any kind of
13 extensive testimony because it just slows things down.
14 And I don't think there is any reason why everything
15 can't be put into writing. Okay.

16 Let me just say something finally about
17 Discovery. I want you to all make a good faith
18 attempt to work out your differences among yourselves.
19 Serious and genuine effort should be made to reach a
20 compromise with each other if you can't agree. I
21 don't want you to come to me for a ruling on a
22 discovery matter without first attempting to reach

1 agreement among yourselves. And I want you to come to
2 me only if there's a complete -- if you hit a brick
3 wall. If absolutely you can't agree on anything. If
4 you could agree on some things, agree on those. And
5 only come to me with the things you can't agree on.

6 If the Motion to Compel is filed or
7 anything or anything relating to Discovery that
8 requires my action I want you to accompany it with a
9 certificate that that movant has in good faith
10 conferred or attempted to confer with the other
11 affected parties in an effort to resolve the dispute
12 without court action. I think that's similar to the
13 federal rules.

14 Now, I'd also like you to serve me with
15 courtesy copies of all of the discovery requests. So
16 that I can sort of loosely keep track of what's going
17 on. I won't read them in detail. I'll skim them.
18 But I want to have them available in case there's a
19 fight. In which case then I can read it.

20 I can't emphasize enough I do not, N-O-T,
21 want copies of documents produced pursuant to document
22 production requests. Because I don't think this

1 building is big enough to hold all of that stuff.
2 Just the request is fine. And the copy of the
3 Interrogatories, the Motion, the Request for
4 Admissions, anything relating to Discovery, please
5 send me a courtesy copy. And I would assume that the
6 Bureau wants copies of those too. If you don't, you
7 can throw them out.

8 The Bureau is a party just like the
9 Complainants are a party and Entergy is a party. And
10 they should be included in any of your discussions to
11 the extent that they want to be included. Maybe they
12 don't want to be included. And maybe they don't want
13 to participate and maybe they don't want to get
14 involved in certain matters. But it's their choice.

15 And the Bureau, if they so desire, has the
16 same rights to cross examination as any other party.
17 And the Bureau has the same rights if they want to
18 introduce exhibits and present witnesses, depose
19 witnesses, file interrogatories, file requests as any
20 other party. I just want put that on the record and
21 make that clear. The extent of their participation is
22 essentially up to them.

1 But I found in the past that it's very
2 helpful to me to have their participation. And if
3 there's -- and if there are motions, to have their
4 comments on the motions.

5 Any questions? That's all I have for this
6 morning. Any questions? Mr. Engel?

7 MR. ENGEL: Your honor, for the record,
8 with regard to voluminous document production, the
9 Bureau only needs electronic copy, if it's -- first of
10 all it saves the parties a great deal of money in
11 copying expenses but we don't need the actual hard
12 copies themselves. We'll -- if it's on a compact disc
13 or if it could be sent in a zipped email file that
14 would be just fine by the Bureau, your honor.

15 ADMIN. JUDGE STEINBERG: Okay. Any other
16 questions, Mr. Rather?

17 MR. RATHER: Yes, your honor. Just a
18 little further clarification --

19 ADMIN. JUDGE STEINBERG: Sure.

20 MR. RATHER: -- if you would please. I
21 understand that what you said about the written direct
22 testimony and I understand the analysis you gave us

1 for how to make sure that that is included in and part
2 of the record. Then when you referred to cross
3 examination, I wasn't sure I fully understood exactly
4 what you said.

5 ADMIN. JUDGE STEINBERG: Okay. The way it
6 usually works is the witness will prepare a written
7 statement and that will be received into evidence or
8 received subject to cross or whatever or -- and then
9 essentially the witness is turned over for cross-
10 examination. And I mean, the written statement is a
11 direct testimony. It's just as if the witness said
12 what he or she had to say in court.

13 Then Mr. Thomas or somebody else would
14 cross-examine that witness essentially on the contents
15 of the written statement. Then you would have an
16 opportunity to redirect and then be re-crossed and
17 that would be it. If you want to.

18 MR. RATHER: And just for example, so that
19 I'll make sure I have a good understanding at the very
20 beginning, I know you have some relaxation of the
21 rules. And I wanted to know how you would anticipate
22 that you would handle a situation where let's say, the

1 Entergy witness has given the written testimony and
2 Mr. Thomas has cross examined him. And wants to ask
3 the about something that he or she has said in
4 deposition testimony and there's a contention that
5 it's outside of the direct.

6 ADMIN. JUDGE STEINBERG: Okay. If it's
7 outside the scope -- well if it's impeachment stuff or
8 if the witness says in his written direct statement it
9 was 10:00 in the morning and in the deposition he said
10 it was 10:00 at night, then he could use the
11 deposition to impeach the witness. Or refresh the
12 witness's recollection.

13 There's a rule in here that talks about
14 use of depositions at the hearings. And I'm not going
15 to pull that one out of my hat.

16 But essentially you can't go -- if it's
17 not in, if it's not in the written statements and he
18 asks questions about it, it's beyond the scope of the
19 direct examination and he can't cross examine on it.
20 So that's -- the standards aren't that loose. You
21 could -- if you don't object -- "Objection your honor
22 that's outside the scope of the direct examination."

1 And if it is, the objection will be sustained.

2 But the use of the deposition, I mean,
3 depositions go all over the place. And but, but, if
4 it is something in the deposition that impeaches the
5 witness, the witness's testimony, he can use that.
6 And same thing, he can use the deposition to refresh
7 the witness's recollection. But if it's an entirely
8 different subject matter and he's trying to
9 essentially use that witness to buttress his, his
10 direct case, he can't do that. Unless he wants to
11 make the witness his own witness.

12 Isn't that the way it works in real court?

13 MR. RATHER: Yes, your honor.

14 ADMIN. JUDGE STEINBERG: I mean, I know
15 this is kind of pretend court. But --

16 MR. RATHER: It's real to me.

17 I am curious, do you have a preferred form
18 of what you would call a stipulation for depositions
19 to keep the parties from getting into any contention
20 as to whether certain objections have been reserved
21 for the time of the hearing?

22 ADMIN. JUDGE STEINBERG: No. Essentially

1 I don't, I don't really like to be called up during
2 depositions to make rulings. Because I kind of don't
3 know what is going on. But in the deposition notices,
4 they should be fairly specific about the subject
5 matter that the witness is going to be asked about.
6 And pretty much stick to that subject matter.
7 Usually, unless it's way beyond the scope of the
8 issues, my ruling will probably be, make your
9 objection but then answer the question. Unless your
10 counsel absolutely directs you not to answer it.

11 Isn't that the way, isn't that the way
12 that usually works in real life?

13 MR. RATHER: It used to but it's changed
14 with the changes in the federal rules to the limited
15 objections now, to the form of the question and
16 matters of privilege. Because that eliminates all of
17 the coaching that use to occur during depositions.

18 And I -- that was my last question for
19 you. Is that the procedure that you would follow?

20 ADMIN. JUDGE STEINBERG: I honestly don't
21 know. Because I don't -- we don't use the federal
22 rules. No, we don't use the federal rules.

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1 I have cases I do for other agencies where
2 they don't have their own rules. And everybody agrees
3 to use the federal rules. But I'm not intimately
4 familiar with, with the overwhelming majority of the
5 federal rules. Because I just never use them. We
6 have our own rules in here and generally the tradition
7 here is during a deposition -- if it's within the
8 scope of the issues, just answer it. Unless if it's
9 a matter of privilege, that's something different. If
10 it's a matter of privilege then you, then you may have
11 to argue that out and show me stuff in camera which I
12 really don't want to do but --

13 MR. RATHER: I would hope that Mr. Thomas
14 and I would be able to amicably resolve --

15 ADMIN. JUDGE STEINBERG: Well, you all
16 seem to be very reasonable but that could be a, you
17 know, a good act just for my benefit. If it becomes
18 a problem then I guess I'll have to study it and see
19 if we can't resolve it.

20 I also wanted to, before we adjourn, I
21 just want to mention there's a May 30, 07, Post
22 Discovery Settlement Conference scheduled. And I just

1 want to say that as far as I am concerned there's
2 nothing in the schedule that requires anybody to wait
3 until May 30, 07 to talk about settlement. And to
4 talk about maybe mediation or arbitration.

5 It, it seems to me like, it seems to me
6 like if people of good faith would get together and
7 air out their complaints and air out their concerns
8 then I don't see anything in the issues that that
9 could not be the subject of a mutual agreement. Where
10 the complainants would get the type of relief they are
11 requesting. And Entergy would get the type of
12 protection that they want for their poles and their --
13 and the people that are servicing the poles and etc.
14 And I really, I really do believe that.

15 And as far as I'm concerned, and I just
16 wish you principals were here because you would hate
17 for me to say this in front of them. It's a gigantic
18 waste of money to litigate this when, maybe people
19 should be locked up in a room for two weeks and
20 without food or water and bathroom facilities. To see
21 if they can't resolve virtually everything that's on
22 the table here. And it's a genuine belief on my part.

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1
2 I've seen this happen in other cases and
3 I would hope that during the course of Discovery --
4 well I know that up until now people have been
5 reluctant to let go of facts. And let go of
6 documents. And I don't blame you for that. But
7 during Discovery you're just going to have to let go
8 of that stuff. And the other party will see what your
9 concerns are. And A will see what B's concerns are
10 and B will see what A's concerns are. And maybe it
11 will be an eye opening experience for both sides. And
12 there will be grounds for compromise then. Okay.

13 Anybody want to add anything to my little,
14 it's not really a diatribe but just a plea?

15 (No response.)

16 Okay. Thank you all for coming. And
17 we'll go off the record now. And I'm sure that this
18 won't be the last time we meet. And I should also
19 offer -- and if you need another conference please let
20 me know and I'll schedule another conference. And I
21 wish you all luck.

22 And we're off the record now.

1 Thank you.

2 (Whereupon, the above entitled
3 matter was concluded at 10:18
4 a.m.)

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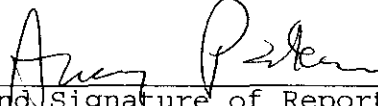
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May 1, 2006

Alex Patton




Date

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